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7 **STATE OF WASHINGTON**  
8 **KING COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 LSI TITLE AGENCY, INC.,

13 Defendant.

NO. 13-2-04105-7

COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF UNDER  
THE CONSUMER PROTECTION  
ACT

14 The Plaintiff, State of Washington, by and through its attorneys Robert W. Ferguson,  
15 Attorney General, and David W. Huey, Senior Counsel, brings this action against the  
16 defendant named below. The State alleges the following on information and belief:

17 **I. JURISDICTION AND VENUE**

18 1.1 The State files this complaint and institutes these proceedings under the  
19 provisions of the Consumer Protection Act, RCW 19.86 and the Deeds of Trust Act, RCW  
20 61.24.

21 1.2 The Defendant has engaged in the conduct set forth in this complaint in King  
22 County and elsewhere in the state of Washington.

23 1.3 Venue is proper in King County pursuant to RCW 4.12.020 and RCW 4.12.025.  
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1 **II. PLAINTIFF**

2 2.1 The Plaintiff is the State of Washington.

3 2.2 The Attorney General is authorized to commence this action pursuant to  
4 RCW 19.86.080 and RCW 19.86.140.

5 **III. DEFENDANT**

6 3.1 Defendant LSI TITLE AGENCY, INC, (LSI or Defendant) is a for-profit  
7 Illinois corporation.

8 3.2 LSI is a wholly-owned subsidiary of LSI Title Company and Lender Processing  
9 Services, Inc.

10 3.3 LSI claims a physical presence in the State of Washington pursuant to RCW  
11 61.24.030(6) at 13920 SE Eastgate Way, Suite 115, Bellevue, WA, and before that at 1111  
12 Main Street, #200, Vancouver, WA 98660.

13 3.4 LSI acts as a foreclosing trustee for grantors and beneficiaries under the Deed of  
14 Trust Act, RCW 61.24 *et seq.*

15 3.5 Foreclosure trustees are responsible for conducting nonjudicial foreclosures,  
16 called trustee's sales, in accordance with the Deed of Trust Act, RCW 61.24 *et al*, and the  
17 terms of the mortgage transaction documents.

18 3.6 Foreclosure trustees must perform their duties in good faith and owe that duty to  
19 the borrower and the beneficiary. RCW 61.24.010(4).

20 **IV. SUMMARY OF ENFORCEMENT ACTION**

21 4.1 Defendant is now, and has been at all times relevant to this lawsuit, acting as a  
22 trustee on thousands of deeds of trust throughout the State of Washington and is thus engaged  
23 in trade or commerce within the meaning of RCW 19.86.020.

24 4.2 Homeowners facing foreclosure are captive to LSI's trustee services.  
25 Homeowners cannot shop around for another trustee, they cannot negotiate the cost of LSI's  
26 services or the cost of the third party services LSI chooses, and they cannot direct LSI's

1 activities. This vulnerable situation is compounded for homeowners by the complexities of the  
2 foreclosure process, by the homeowners' highly distressed financial circumstances, and the  
3 high stakes nature of the proceeding. Foreclosure sales are usually irreversible. Any defense  
4 must be asserted before the sale occurs. Because courts are not involved in foreclosures,  
5 homeowners' only protections are the detailed procedures and requirements contained in the  
6 Deed of Trust Act, and a neutral foreclosure trustee who insures those procedures are followed  
7 to the letter.

8 4.3 LSI is a foreclosure trustee that has failed to comply with the procedures of the  
9 Deed of Trust Act in each and every foreclosure it has conducted since at least June 12, 2008.

## 10 V. FACTS

11 5.1 LSI regularly acts as a successor trustee for deeds of trust secured by residential  
12 real property located in the State of Washington.

13 5.2 LSI has been at all times relevant to this action in competition with others  
14 engaged in similar activities in the state of Washington and engages in the acts below as a  
15 matter of practice.

16 5.3 Defendant has failed to maintain the statutorily-required physical presence in  
17 the State of Washington, with telephone service at that address. RCW 61.24.030(6).

18 a. By issuing Notices of Trustee's Sale, conducting trustee's sales, and  
19 issuing Trustee's Deeds without maintaining the required physical  
20 presence, Defendant has misrepresented its authority to issue such  
21 notices, conduct trustee's sales, and issue Trustee's Deeds.

22 b. By conducting the nonjudicial foreclosure process while failing to  
23 maintain a physical presence with telephone service, the Defendant has  
24 unfairly: i) prevented homeowners from having face-to-face contact with  
25 their trustee, ii) prevented homeowners from gaining responses to time-  
26 sensitive foreclosure issues, iii) prevented homeowners from physically

1 presenting time-sensitive payments to stop a foreclosure, iv) prevented  
2 homeowners from delivering payments in a manner that insures that the  
3 beneficiary can not deny timely payment was made, v) prevented  
4 homeowners from physically presenting mortgage-related documents in  
5 a manner that will stop the beneficiary from claiming the homeowner  
6 failed to provide such documents, and vi) potentially clouded title to  
7 homes it has sold at auction.

8 5.4 As a trustee on deeds of trust, Defendant has a duty of good faith towards the  
9 borrower and grantor on the deed of trust, as well as to the beneficiary.

10 5.5 LSI has agreements with beneficiaries and/or their agents to the effect that LSI  
11 will only cancel or continue non-judicial foreclosure sales if the beneficiary or agent approves.

12 5.6 LSI has committed unfair and deceptive acts and violated its duty of good faith  
13 by noticing and conducting trustee sales while failing to perform statutory requisites for  
14 conducting such sales as contained in the Deed of Trust Act, RCW 61.24.030 and .040. Those  
15 failures include:

- 16 a. Failing to maintain a physical presence with telephone service at that  
17 address.
- 18 b. Failing to identify the actual owner of the Promissory Note in the Notice  
19 of Default.
- 20 c. Failing to obtain proof that the beneficiary is the owner of the  
21 promissory note secured by the deed of trust.
- 22 d. Creating or using documents essential to a valid trustee's sale, or to a  
23 reconveyance of the deed of trust, that are improperly executed,  
24 notarized or sworn to.

1           5.7 Homeowners have the right to stop a foreclosure by paying an amount (the  
2 “reinstatement amount”) set by statute and itemized by the foreclosure trustee.  
3 RCW 61.24.090.

4           5.8 The Deed of Trust Act limits the reinstatement amount to the following charges:  
5 arrearages on the loan; expenses “actually incurred” by the trustee to enforce the note; a  
6 reasonable trustee’s fee; a reasonable attorney’s fee; and, the costs of recording a notice of  
7 discontinuance of the foreclosure. RCW 61.24.090 (1)(a) and (b).

8           5.9 Defendant has failed to properly itemize and/or misrepresented the  
9 reinstatement amount, including but not limited to, by demanding “misc.” fees, by demanding  
10 fees for charges not actually incurred and/or services not provided such as certain title  
11 insurance-related fees and cancellation of notice fees, and by demanding fees that should not  
12 be imposed on the homeowner such as for transferring interests to assignees.

13           5.10 By demanding inaccurate amounts and failing to properly itemize amounts,  
14 Defendant has prevented borrowers from determining whether fees are reasonable, has  
15 overcharged borrowers and has prevented borrowers from curing their default within the  
16 statutory guidelines for reinstatement.

17           5.11 LSI initiated foreclosures on homes without first performing its “meet and  
18 confer” duties or assuring itself that the beneficiary complied with RCW 61.24.031, thus  
19 depriving homeowners of their opportunity to avoid foreclosure.

20           5.12 Defendant systematically conceals, misrepresents or inaccurately divulges the  
21 true parties to the mortgage transaction in its foreclosure notices and related documents.

22           a. LSI records in county land records Appointments of Successor Trustee  
23 from purported beneficiaries, knowing, or duty-bound to know, that they  
24 are not the holders of the loans and are therefore not beneficiaries under  
25 the Deed of Trust Act.  
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- 1           b.     In Notices of Default, LSI misrepresents the owner of the Promissory  
2                 Note by only naming the servicer. Defendant does not identify the actual  
3                 owner or its address anywhere on the Notices of Default. The Deed of  
4                 Trust Act requires LSI to identify both the owner of the note and the  
5                 servicer of the note, with their respective addresses, as well as the  
6                 servicer's phone number, on each Notice of Default. RCW  
7                 61.24.030(8)(1).
- 8           c.     In the Notice of Foreclosure, LSI fails to disclose the date it served or  
9                 posted the Notice of Default, as required by RCW 61.24.040 (1) (f),  
10                preventing homeowners from determining whether the property can be  
11                lawfully sold on the date listed in the Notice.
- 12          d.     In the Notice of Trustee's Sale LSI makes contradictory and misleading  
13                 statements regarding a tenant's right to occupy foreclosed property.  
14                 RCW 61.24.040 (9). LSI states, incorrectly, that foreclosure purchasers  
15                 have the right to evict tenants 20 days after sale. The same notice later  
16                 states that the foreclosure purchaser can either give a new rental  
17                 agreement or a notice to vacate in 60 days before the end of the monthly  
18                 rental period.

19           5.13   Defendant's failures to abide by the Deed of Trust Act have concealed material  
20           information needed by homeowners to assert rights and defenses stemming from their loan  
21           transaction, to meaningfully negotiate the terms of a loan modification, to exercise their  
22           statutory right to reinstate their mortgage, to cure their defaults, and to postpone or stop a  
23           foreclosure sale.

1 **VI. CAUSES OF ACTION**

2 **A. Misrepresentations**

3 6.1 In the course of conducting its business Defendant made numerous  
4 misrepresentations and failed to disclose material terms as alleged in paragraphs 1.1 through 5.13.  
5 Such conduct constitutes unfair or deceptive acts or practices in trade or commerce, and/or unfair  
6 methods of competition in violation of RCW 19.86.020, is contrary to the public interest, and is  
7 not reasonable in relation to the development and preservation of business.

8 **B. Unfair Practices**

9 6.2 In the course of conducting its business Defendant engaged in numerous unfair  
10 acts and practices as alleged in paragraphs 1.1 through 5.13. Such conduct constitutes unfair  
11 practices and violates RCW 19.86.020, is contrary to the public interest, and is not reasonable in  
12 relation to the development and preservation of business.

13 **VII. PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff, State of Washington, prays for relief as follows:

15 7.1 That the Court adjudge and decree that the Defendant has engaged in the conduct  
16 complained of herein.

17 7.2 That the Court adjudge and decree that the conduct complained of constitutes  
18 unfair or deceptive acts and practices and an unfair method of competition and is unlawful in  
19 violation of the Consumer Protection Act, Chapter 19.86 RCW.

20 7.3 That the Court issue a permanent injunction enjoining and restraining the  
21 Defendant, and its representatives, successors, assigns, officers, agents, servants, employees, and  
22 all other persons acting or claiming to act for, on behalf of, or in active concert or participation  
23 with the Defendant, from continuing or engaging in the unlawful conduct complained of herein.

24 7.4 That the Court assess civil penalties, pursuant to RCW 19.86.140, of up to two  
25 thousand dollars (\$2,000) per violation against the Defendant for each and every violation of  
26 RCW 19.86.020 caused by the conduct complained of herein.

7.5 That the Court make such orders pursuant to RCW 19.86.080 as it deems appropriate to provide for restitution to consumers of money or property acquired by the Defendant as a result of the conduct complained of herein.

7.6 That the Court make such orders pursuant to RCW 19.86.080 to provide that the plaintiff, State of Washington, have and recover from the Defendant the costs of this action, including reasonable attorneys' fees.

7.7 For such other relief as the Court may deem just and proper.

DATED this 31<sup>st</sup> day of January, 2013.

Respectfully submitted,

ROBERT W. FERGUSON  
Attorney General

DAVID W. HUEY, WSBA 31380  
Senior Counsel  
For the State of Washington